

Noxious Weed Regulatory Guidelines

Introduction

The control of noxious weeds is regulated through several federal and state laws, and at the local government level through county and city codes, such as those designed to protect critical areas. It is important that noxious weed control activities are consistent with these local, state, and federal regulations. The following guidelines aim to assist landowners who are controlling noxious weeds in King County, Washington to remain in compliance with these regulations. Some regulations affect noxious weed control generally and others relate specifically to noxious weed control in critical and aquatic areas.



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NOXIOUS WEED LAWS

Legal Requirement to Control Noxious Weeds in King County

Washington State Noxious Weed Law RCW 17.10 requires all landowners to eradicate Class A noxious weeds and to control designated Class B and Class C noxious weeds on their properties, as determined by the State Noxious Weed Board and the King County Noxious Weed Control Board. Control, as defined by state law, means to prevent all seed production and to prevent the dispersal of all propagative parts capable of forming new plants.

State Noxious Weed Law

Noxious weeds are non-native plants that, once established, are highly destructive, competitive and difficult to control. They have economic and ecological impacts and are very difficult to manage once they get established. Some are toxic or a public health threat to humans and animals; others destroy native and beneficial plant communities.

To help protect the state's resources and environment, the Washington State Noxious Weed Board adopts a state weed list each year (Chapter 16-750 WAC), in accordance with the state noxious weed law (Chapter 17.10 RCW). Noxious weeds are separated into classes A, B, and C based on distribution, abundance, and level of threat (how dangerous the plant is to humans, animals, private and public lands, and native habitats).

The goal of the state weed law is to prevent the spread of new and recently introduced weeds while it is still feasible to do so. Class A weeds are the most limited in distribution and therefore the highest priority for control. Class B and C weeds vary in priority based on local distribution and impacts. Not all weeds are classified as noxious weeds in Washington State and only species that are not native to the state are considered for noxious weed listing. Between November and April, any person may request a change to the Washington State Noxious Weed List for the following year. For more information on the state's weed listing process and how you can participate, contact the Washington State Noxious Weed Board.



Noxious weeds are designated for control in all or parts of the state based on where it is still feasible to eradicate or contain the weeds. Property owners, public and private, are required to control all Class A weeds and any Class B or C weeds that are designated by the state or county weed board for control in their area. "Control", as defined in WAC 16-750, means to prevent all seed production and to prevent the dispersal of all propagative parts capable of forming new plants. Class A weeds need to be eradicated or removed entirely and Class B and C weeds designated for an area need to be controlled to prevent their spread.

King County Noxious Weed List

The King County Noxious Weed Control Board administers the Washington State noxious weed law in King County. Each year, the Board adopts the King County Noxious Weed List, which specifies which noxious weed species property owners are required to control in the county. The county weed list includes all Class A weeds on the state noxious weed list, all Class B weeds designated by the state for control in the county, and any additional Class B or C weeds that are designated by the county weed board for required control in the county. All Class A, B and C weeds on the county weed list need to be controlled by the property owner.

In addition to the regulated weeds, the county weed list includes state-listed Class B and C noxious weeds not designated for King County (Non-Regulated Noxious Weeds) and additional invasive weeds that are not classified as noxious weeds on the state list but are problematic in King County (Weeds of Concern List). Control of these weeds is not required in King County but it is encouraged, and the county provides advice and technical bulletins to assist property owners with control.

State Restrictions on the Sale and Transport of Noxious Weeds

The state noxious weed law restricts the sale and transport of certain noxious weeds under its quarantine sections. The prohibited plant species are listed in Chapter 16-752 of the Washington Advisory Code (WAC). There are two main lists: the Terrestrial Noxious Weed Seed and Plant Quarantine, WAC 16-752-610, and the Wetland and Aquatic Weed Quarantine, WAC 16-752-505. There are also additional quarantine rules that apply to specific noxious weeds such as purple loosestrife, tansy ragwort, and yellow and purple nutsedge. The state quarantines identify plants known to be invasive and a detriment to the state's natural resources in order to prevent the continued introduction of these problem plants into Washington.

For all plant species listed in the quarantines, it is illegal to transport, buy, sell, offer for sale, or to distribute plants or plant parts into or within the state of Washington. It is further prohibited to intentionally transplant wild plants and/or plant parts of these species within the state of Washington. For more information on these quarantines, contact the WSDA Nursery Inspection Program and read the Prohibited Plants List brochure.

Federal Noxious Weed Law

United States Department of Agriculture (USDA) requires permits for the importation and/or interstate movement of federal noxious weeds – aquatic and wetland, parasitic and terrestrial – under the authority of 7 CFR 360. The list of regulated taxa is in 7 CFR 360.200. Section 403 of the Plant Protection Act (PPA) defines a noxious weed as: *“any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.”* There are only a few species in common between the federal and the state noxious weed lists.

PESTICIDE LAWS AND REGULATIONS

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

USDA administers the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which provides federal control on the sale, distribution and use of herbicides and pesticides, including those used in aquatic areas. FIFRA requires that pesticide uses and recommendations comply with the product label. FIFRA also requires that the pesticide laws enacted by the individual states conform to federal standards. State laws (such as the Washington State Pesticide Control Act described below) cannot be less restrictive than those of FIFRA, but may be more restrictive. Use of a pesticide in a particular area must be consistent with the product label. Pesticides may not be applied to water or where they can drain into water unless the product label specifies aquatic use (and that use may further be restricted by state laws or license requirements). Pesticide labels may also have restrictions for use near water or related to water table levels.

Federal Restrictions on Herbicides Related to the Endangered Species Act

The Endangered Species Act (7 USC 136; 16 USC 460 et seq.) provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. EPA's decision to register a pesticide is based in part on the risk of adverse effects on endangered species including how a pesticide will affect habitat.

On July 3, 2002, the U.S. District Court for the Western District of Washington at Seattle found that the U.S. Environmental Protection Agency (EPA) had violated its obligations under the Endangered Species Act. The ruling was in response to a lawsuit brought by the Washington Toxics Coalition and other environmental and fishing groups. The court issued a final order on January 22, 2004. This order restricts the use of several herbicides (including 2,4-D and triclopyr BEE) in specified buffer areas (20 yards for ground applications and 100 yards for aerial applications) beside streams bearing endangered salmonid species. Restrictions for 2,4-D apply only when used for aquatic weed control. Updated information on the implementation of this court ruling is available from the WSDA Endangered Species Unit (<http://agr.wa.gov/PestFert/NatResources/EndangSpecies.htm>).

State Laws Regulating Aquatic Pesticide Use

Washington State Pesticide Control Act (RCW 15.58) and Washington State Pesticide Application Act (RCW 17.21)

The Washington Pesticide Control Act and Pesticide Application Act provide additional state control on the sale, distribution, and use of herbicides and pesticides. Washington State Department of Agriculture (WSDA) has restricted the use of all pesticide formulations labeled for application onto or into water. Only WSDA licensed pesticide applicators with an aquatic endorsement, or persons working under the direct supervision of such an applicator, can purchase and use aquatic pesticide formulations (<http://agr.wa.gov/PestFert/LicensingEd/Licensing.htm>). Also, pesticides must be registered for aquatic use in the State of Washington to be used in aquatic areas in Washington State. There are products approved by the EPA for aquatic use that are not registered in Washington and

therefore can not be used in aquatic areas in the state. For information of which pesticides are registered in Washington, contact the Department of Ecology (<http://www.ecy.wa.gov/programs/wq/pesticides/regpesticides.html>).

The Water Pollution Control Act (RCW 90.48)

The Water Pollution Control Act regulates noxious weed control activities that discharge herbicides and other pollutants directly into surface waters of the state through the Aquatic Pesticide Permit system (RCW 90.48.445). This implements the Clean Water Act Sec. 402 described below. Aquatic Pesticide Permits are issued by the Washington State Department of Ecology. There are two permit types, the Aquatic Plant and Algae Permit for chemical control of submerged weeds, and the Aquatic Noxious Weed Control NPDES General Permit for chemical control of emergent or shoreline noxious weeds. Agencies and contractors can receive coverage under the Washington State Department of Agriculture programmatic Aquatic Noxious Weed Control permit (<http://www.ecy.wa.gov/programs/wq/pesticides/index.html>).

County Code Regulating Pesticide Use in Water

Water Quality Ordinance

The water quality management chapter of the King County Code (Chapter 9.12) regulates the release of herbicides, pesticides and fertilizers into surface water, storm and groundwater, and the Puget Sound. In general, compliance with the state administered aquatic pesticide permit requirements described in the sections above ensures compliance with the King County Water Quality Ordinance.

OTHER AQUATIC AND CRITICAL AREA REGULATIONS

Types of Aquatic Critical Areas

The rules and regulations related to protecting aquatic areas are generally more restrictive and involve state and federal laws as well as county and city codes. The definitions of different aquatic critical areas often vary with the level of jurisdiction, laws and regulatory agency involved. The definitions provided here are taken from the King County Code and provide a general description of the aquatic critical areas regulated in unincorporated King County. When dealing with noxious weeds within an incorporated area, it is recommended that you refer to the definition in the relevant city code.

Wetlands

A wetland is an area that is inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances supports, a prevalence of vegetation typically adapted for life in saturated soil conditions (*King County Code 21A.06.1391*). An inventory of wetlands in unincorporated King County was published in 1983 and updated in 1990. Copies of the inventory can be found in most local libraries and by contacting King County Department of Development and Environmental Services (DDES). However, the inventory is not comprehensive and it is important if you suspect an area is a wetland to seek further advice before initiating any weed control activities not permitted in wetlands.

Streams and Agricultural Drainage

Streams are aquatic areas where surface water produces a channel. Wholly artificial channels are considered the same as naturally occurring streams **only when** the artificial channel is used by salmonids or used to convey a stream that occurred naturally before construction (*King County Code 21A.06.1240*). Agricultural drainage is any stream, ditch, tile system, pipe or culvert primarily used to drain fields for horticultural or livestock activities (*King County Code 21A.06.037*). King County Agricultural Drainage Assistance Program provides technical and financial support to farmers attempting to clean agricultural waterways.

Lakes and Other Aquatic Areas

An aquatic area is any non-wetland water feature including all shorelines of state waters, rivers, streams, marine waters, inland bodies of open water including lakes and ponds, reservoirs and conveyance systems and impoundments of these features if any portion of the feature is formed from a stream or wetland. Aquatic areas do not include water features that are entirely artificially collected or conveyed storm or wastewater systems or entirely artificial channels, ponds, pools or other similar constructed water features (*King County Code 21A.06.072c*).

Buffers of Wetlands and Aquatic Areas

A buffer is a designated area contiguous to and intended to protect and be an integral part of an aquatic area or wetland (*King County Code 21A.06.122*).

United States Clean Water Act

According to the Clean Water Act (33 U.S.C. 1251 - 1375), a noxious weed control activity that results in the deposition of fill into aquatic areas with federal jurisdiction (Waters of the U.S.) requires consultation with the U.S. Corps of Army Engineers (USCOE). The USCOE may require a permit under Sections 404 of the Clean Water Act and Section 401 Water Quality Certification (administered by the Washington State Department of Ecology). A single application form, the [Joint Aquatic Resource Permit Application \(JARPA\)](#), consolidates the permit application process for these and other federal, state, and local permits.

Section 402 of the Clean Water Act (CWA) defines the National Pollution Discharge Elimination System (NPDES), administered by the EPA. The NPDES requires anyone who wants to discharge pollutants (including herbicides), into aquatic areas with federal jurisdiction, to first obtain an NPDES permit, or that discharge will be considered illegal. The CWA allows the EPA to delegate the NPDES Permit Program to state governments, enabling states to perform many of the permitting, administrative, and enforcement aspects of the program. The Washington State Department of Ecology (DOE) administers Aquatic Pesticide Permits in lieu of NPDES permits for use of herbicides to control aquatic noxious weeds in Washington (described above).

State Hydraulic Project Approval

In general, work that uses, diverts, obstructs or changes the natural flow or bed of state waters requires a Hydraulic Project Approval (HPA, RCW 75.20.100-160) from the Washington Department of Fish and Wildlife (WDFW). Many aquatic noxious weed control activities require a HPA. The possession of the WDFW pamphlet "Aquatic Plants and Fish" acts as the HPA for many small scale aquatic noxious weed control activities, including the use of

mechanical cutting and harvesting techniques. The pamphlet is available free of charge on the WDFW website (<http://wdfw.wa.gov/hab/aquaplnt/aquaplnt.htm>) or by calling 360-902-2594. Projects conducted solely for the control of cordgrass (*Spartina* species) by any method or purple loosestrife with hand held equipment, may be conducted without obtaining an HPA or HPA pamphlet. WDFW authorization is required for the use of bottom barriers, weed rollers and diver dredges to control aquatic noxious weeds.

King County Clearing and Grading and Critical Areas Ordinances

In unincorporated King County, noxious weed control activities are regulated by components of the King County Code. Landowners in incorporated areas of King County should refer to their local municipal code to determine local government regulations regarding vegetation removal and activities that occur in critical areas and their buffers.

Two sections of the King County Code most directly affect noxious weed and invasive vegetation control activities in unincorporated King County: 1) The Clearing and Grading Ordinance (Chapter 16.82) regulates vegetation removal from critical areas through clearing and grading; and 2) The Critical Areas Ordinance (Chapter 21A.24) defines critical areas and their buffers, and describes development standards.

Under King County Code, noxious weeds are defined as any plant species listed on the Washington State Noxious Weed List (WAC 16-750). On the King County Noxious Weed List, the plants listed under the Class A, Class B, Class C, and Non-Regulated categories are all state-listed noxious weeds. Invasive vegetation is defined in King County Code as any plant species listed as a Weed of Concern on the King County noxious weed list ('Weeds of Concern' were formerly known as 'Obnoxious Weeds'). Plants listed as Weeds of Concern are not on the state noxious weed list but are considered invasive species by the King County Noxious Weed Control Board.

Clearing and Grading Ordinance

The control of state-listed noxious weeds is generally exempt from the requirement of a Clearing and Grading permit (KCC16.82.050). However, for invasive vegetation (King County Weeds of Concern), clearing over seven thousand square feet annually per site requires a Clearing and Grading permit unless it is done in accordance with an approved farm management plan, forest management plan or rural stewardship plan. In wetlands, aquatic areas, and wildlife networks, clearing less than seven thousand square feet of invasive vegetation is allowed without a permit if hand labor is used or if it is done in accordance with an approved farm management plan, forest management plan or rural stewardship plan. In all other areas, clearing less than seven thousand square feet of invasive vegetation is allowed without a permit and is not limited to hand labor. Clearing and Grading Permits are issued by the King County Department of Development and Environmental Services (DDES, <http://www.kingcounty.gov/permits>).

In addition, the county code specifies that "a person who clears, grades or otherwise disturbs a site shall provide erosion and sediment control that prevents, to the maximum extent practicable, the transport of sediment from the site to drainage facilities, water resources and

adjacent properties. Erosion and sediment controls shall be applied as specified by the temporary erosion and sediment control measures and performance criteria and implementation requirements in the King County Surface Water Design Manual adopted in accordance with K.C.C. Chapter 9.04" (KCC 16.82.095).

Critical Areas Ordinance

In addition to the requirements of the Clearing and Grading Ordinance, the county code further regulates activities that occur in county-defined critical areas, including:

- Wetlands
- Aquatic and Severe Channel Migration Areas
- Landslide Hazard Areas (Over 40%)
- Steep Slope Hazard Area
- Wildlife Habitat Network Areas *

*No clearing practices or other disturbances are allowed in Wildlife Habitat Network areas during breeding seasons established under Section 198 of King County Ordinance 15051.

Removing noxious weeds and invasive vegetation is allowed in these critical areas if conducted in accordance with an approved forest management plan, farm management plan, or rural stewardship plan.

Without an approved plan, control of noxious weeds and invasive vegetation in these critical areas is allowed only if removal is undertaken with hand labor, including hand-held mechanical tools, unless the King County Noxious Weed Control Board prescribes the use of riding mowers, light mechanical cultivating equipment, herbicides or biological control methods. Refer to the Best

Management Practices (BMP) for the specific noxious weed to be controlled for a description of these additional allowed weed control prescriptions

(www.kingcounty.gov/weeds). If other methods are prescribed in the King County Best Management Practices for that weed, then control with these methods is allowed in critical areas without a county permit. However, all state and federal laws must still be followed, including those

regulating the use of herbicides. In addition, the area must be stabilized to avoid re-growth or regeneration of noxious weeds and re-vegetated with native or non-invasive vegetation.



King County Critical Areas and Clearing Grading Ordinance Summary

For removal of noxious weeds or invasive vegetation in Ordinance 15051 (Critical Areas):

Landslide Hazard Over 40%	Steep Slope Hazard Area	Wetland And Buffer	Aquatic and Severe Channel Migration	Wildlife Habitat Network
A 23	A 23	A 23	A 23	A 4 & 23

A 4= Allowed if no clearing, external construction or other disturbance in a wildlife habitat conservation area occurs during breeding seasons established under Section 198 of this ordinance.

A 23= Allowed as follows:

- a. if conducted in accordance with an approved forest management plan, farm management plan, or rural stewardship plan; or
- b. without an approved forest management plan, farm management plan or rural stewardship plan, if

(1) removal is undertaken with hand labor, including hand-held mechanical tools, unless the King County Noxious Weed Control Board otherwise prescribes the use of riding mowers, light mechanical cultivating equipment or herbicides or biological control methods;

(2) the area is stabilized to avoid re-growth or regeneration of noxious weeds;

(3) the cleared area is re-vegetated with native or non-invasive vegetation and stabilized against erosion; and

(4) herbicide use is in accordance with federal and state law.

For the removal of noxious weeds in Ordinance 15053 (Clearing and Grading):

Out of Critical Area and Buffer	Coal Mine	Flood Hazard	Channel Migration	Landslide Hazard	Volcanic and Seismic Hazard	Steep Slope and Erosion Hazard	Critical Aquifer Recharge Area	Wetlands and Buffers	Aquatic Area & Buffer	Wildlife Network
NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP

NP= No permit required

For the removal of invasive vegetation in Ordinance 15053 (Clearing and Grading):

Out of Critical Area and Buffer	Coal Mine	Flood Hazard	Channel Migration	Landslide Hazard	Volcanic and Seismic Hazard	Steep Slope and Erosion Hazard	Critical Aquifer Recharge Area	Wetlands and Buffers	Aquatic Area & Buffer	Wildlife Network
NP 7	NP 7	NP 7	NP 7	NP 7	NP 7	NP 7	NP 8	NP 8	NP 8	NP 8

NP 7= No permit required as long as cumulative clearing of less than seven thousand square feet annually or conducted in accordance with an approved farm management plan, forest management plan or stewardship plan.

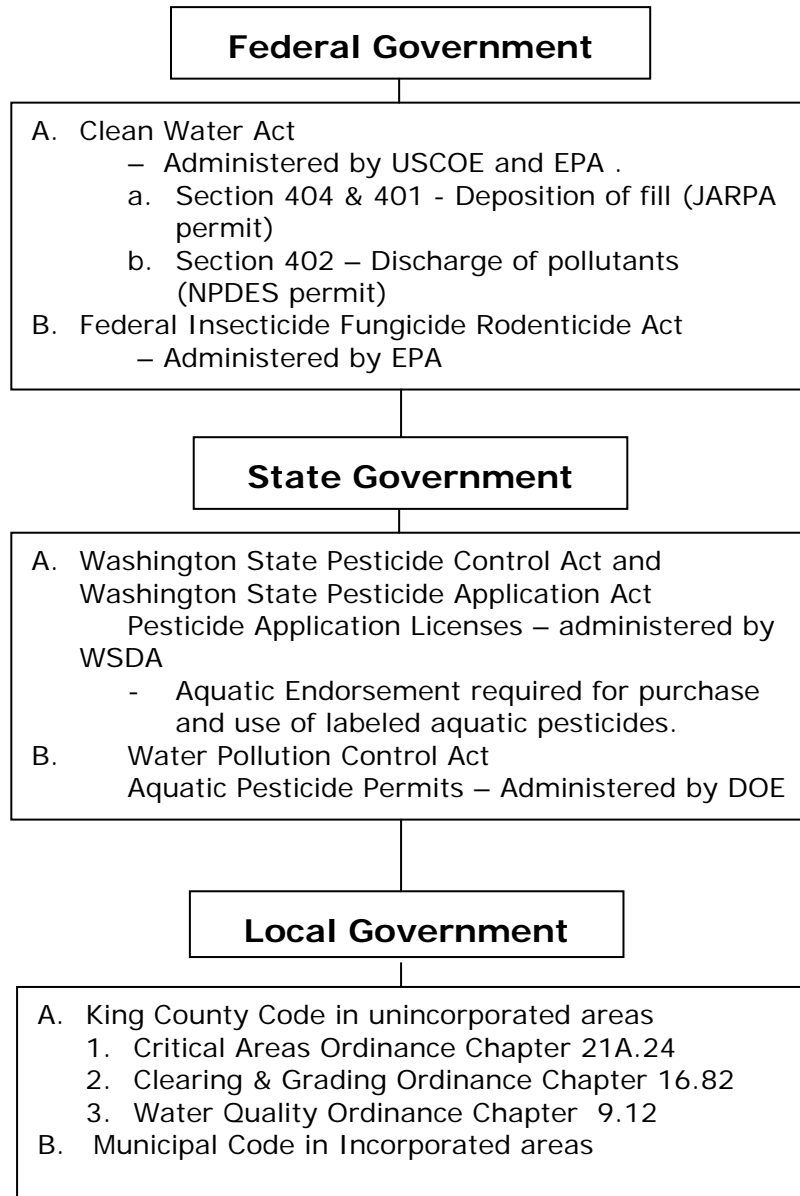
NP 8= Cumulative clearing of less than seven thousand square feet and either:

- a. conducted in accordance with a farm management plan, forest management plan or a rural stewardship plan; or
- b. limited to removal with hand labor.

For more information on these ordinances, please contact the Department of Development and Environmental Services (DDES) at 206-296-6600 or visit their website at

<http://www.kingcounty.gov/property/permits.aspx>

Noxious Weed Regulation Schematic



Note: This schematic was created for the purpose of this document only, and is not meant to encompass all federal, state, or local regulations regarding aquatic critical areas.

RESOURCES AND REFERENCES

Resources

This document is to be used as a general guide to regulatory compliance issues when controlling noxious weeds in aquatic and other critical areas in King County, Washington. Landowners may require further guidance from the relevant regulatory agency to make informed decisions of noxious weed control in aquatic and other critical areas. Below is a list of additional resources, including websites and contacts in incorporated areas.

King County Noxious Weed Program: <http://www.kingcounty.gov/weeds>

King County Department of Development and Environmental Services (DDES):

<http://www.kingcounty.gov/permits>

King County Agricultural Drainage Assistance Program:

<http://www.kingcounty.gov/environment/waterandland/agriculture/drainage-assistance.aspx>

U.S. Corps of Army Engineers: <http://www.nws.usace.army.mil>

Washington State Department of Agriculture (WSDA): <http://agr.wa.gov/>

Washington Department of Ecology (DOE): <http://www.ecy.wa.gov/>

Aquatic Plants information: <http://www.ecy.wa.gov/programs/wq/links/plants.html>

Washington State Department of Fish and Wildlife (WDFW): <http://wdfw.wa.gov/>

Aquatic Plants information: <http://wdfw.wa.gov/hab/aquaplnt/aquaplnt.htm>

Washington State Office of Regulatory Assistance: <http://www.ora.wa.gov/>, phone 800-917-0043
(Information on environmental permits issued by federal, state, or local government)

Local Government Municipal Codes: <http://www.mrsc.org/codes.aspx>

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